unreasonable' practice under section 201 of the Act, as well as an 'undue and unreasonable preference or advantage' under section 202 of the Act."[267]

The Supreme Court's rationale for reinstating the UNE combination rules in *Verizon v. FCC* applies equally for combining section 251 and section 271 network elements. In *Verizon v. FCC*, the Court stated that the combination rules "reflect a reasonable reading of the statute, meant to remove practical barriers to competitive entry into local-exchange markets...."[268] The Court further stated that it is not unreasonable to require combinations of network elements that the ILEC would combine for its own customer:

> There is no dispute that the incumbent could make the combination more efficiently than the entrant, nor is it contested that the incumbent would provide the combination itself if a customer wanted it or the combination served a business purpose. It hardly seems unreasonable, then, to require the incumbent to make the combination, for which it will be entitled to a reasonable fee; otherwise, an entrant would not enjoy true 'nondiscriminatory access'...[269]

This same reasoning is applicable to the combining of section 251 UNEs and section 271 network elements. There is no functional difference between a section 271 network element and its section 251 equivalent. Since BOCs already combine these network elements for their own purpose, as the Court stated, "it hardly seems unreasonable" to require the BOC to combine them upon CLEC request.

---

267 *Id.* ¶ 591 (citations omitted).

268 *Verizon v. FCC*, 535 U.S. at 473 (citations omitted).

269 *Id.* at 538 (citations omitted).

F. Carriers Are Required To File Commercially Negotiated Agreements With State Commissions.

1. *The Commission must require carriers to file commercially negotiated agreements.*

The Commission also has sought comment on whether, under section 252 of the Act, ILECs are required to file agreements "governing access to network elements for which there is no section 251(c)(3) unbundling obligation."[270] The Joint Commenters maintain that the Commission must require carriers to file all commercially negotiated agreements with the applicable state commissions, and must reject BellSouth's and SBC's attempts to rewrite the Act for their own benefit.[271] Under the plain language of the Act, all commercially negotiated agreements for network elements must be filed with the applicable state commission. In particular, there is no question that commercially negotiated agreements that contain rates, terms and conditions for network elements are subject to filing with the appropriate state commission under section 252 of the Act. Contrary to BellSouth's argument, these agreements are *not* federal agreements that are subject to the filing requirements set forth in section 211 of the Act. In addition to fulfilling the explicit statutory obligation in the Act, it is necessary for the Commission to require carriers to file these agreements in furtherance of the nondiscrimination obligations set forth in the Act. The Commission also must reject BellSouth's petition for forbearance of the filing requirement.

---

270 *Permanent Rules NPRM* ¶ 13.

271 *See* BellSouth Petition for Forbearance, Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Section 252 with Respect to Non-251 Agreements, (filed May 27, 2004); *see also* SBC Communications, Inc., Emergency Petition for Declaratory Ruling, Preemption, and Standstill, WC Docket No. 04-172 (filed May 3, 2004); BellSouth, Emergency Petition for Declaratory Ruling (filed May 27, 2004).

Section 252(a) of the Act states that any commercially negotiated agreements specifically pertaining to interconnection, services, and network elements "shall be submitted to the State commission under subsection (e) of this section."[272] Section 252(e)(1) requires "any interconnection agreement adopted by negotiation" to be filed with the state commissions for approval.[273] Therefore, section 252 establishes that any agreement that addresses interconnection, network elements, or services, as those terms are defined explicitly or implicitly in the Act is an agreement that, consistent with section 252(i), must be filed with state commissions.

The Commission already has concluded that any agreements that pertain to "ongoing obligations" with respect to network elements are "interconnection agreements" that must be filed with state commissions.[274] In the *Qwest Declaratory Ruling*, the Commission rejected Qwest's argument that section 271 network elements are not required to be included in interconnection agreements filed with the states.[275] The Commission concluded that section 252 creates a broad obligation to file agreements, subject to several narrow exceptions that do not exempt section 271 elements.[276] The Commission made clear that any agreement addressing

---

272 47 U.S.C. § 252(a).

273 *Id.* §252(a)(1) (stating that any agreement pertaining to "interconnection, services, or network elements pursuant to section 251" is an interconnection agreement that falls within the scope of section 252 of the Act).

274 *Qwest Communications International Inc., Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1), Memorandum Opinion and Order*, 17 FCC Rcd 19,337 ¶ 8 (2002) ("*Qwest Declaratory Ruling*"); *see also Qwest Corp. Apparent Liability for Forfeiture,* File No. EB-03-0IH-0263, ¶ 23 (rel. Mar. 12, 2004).

275 *Qwest Declaratory Ruling* ¶ 8.

276 *Id.*

ongoing obligations involving network elements – the access and unbundling obligations of section 271 fall squarely within that definition – must be incorporated in interconnection agreements subject to the section 252 review process and, to the extent there is any question regarding those obligations, the state commissions are to decide the issue.[277]

To date, several state commissions have evaluated this same issue and have concluded uniformly that these agreements must be filed with the applicable state commission. As one example, the California Public Utilities Commission ("California PUC") required SBC to file an agreement negotiated with Sage Telecom, stating, "to perform this statutory duty [under section 252(e)(2) of the Act], the interconnection agreement must be filed with the [California] Commission and open to review by any interested party."[278] The Texas Public Utilities Commission ("Texas PUC") also required SBC to file the agreement negotiated with Sage, quoting the *Qwest Declaratory Ruling* and stating "the filing and review requirements are the first and strongest protection under the Act against discrimination by the incumbent LEC and its competitors."[279]

In addition, as the Commission recognized in the *Qwest Declaratory Ruling*, under the Act, Congress explicitly reserved a role for the states to determine which agreements should be filed with the state commissions:

> Based on their statutory role provided by Congress and their experience to date, state commissions are well positioned to decide on a case-by-case basis whether a particular agreement is required

---

277 *Id.*

278 Letter to SBC from Randolph L. Wu, California PUC (Apr. 21, 2004).

279 *Joint CLEC Petition for a Ruling Relative to the Need for Public Review*, PUC Docket No. 29644, Order (May 13, 2004).

> to be filed as an 'interconnection agreement' and, if so, whether it should be approved or rejected.[280]

It is up to the states to determine, on a case-by-case basis, which agreements must be filed with the respective commission.

There is no need for the Commission to preempt inconsistent state actions. In the *Qwest Declaratory Ruling*, the Commission provided guidance to the state commissions to determine which agreements should be filed for approval. As long as the state commissions act within these parameters then there is no need for the Commission to take over a role that Congress has provided explicitly to the states. As the Commission stated in the *Qwest Declaratory Ruling*, if "competition-affecting inconsistencies in state decisions arise," then carriers can file a petition for declaratory ruling at that time addressing the discrepancies in those agreements.[281]

It is essential that all agreements be made publicly available in the manner provided by the Act. As this Commission has recognized, section 252(i) is "a primary tool of the 1996 Act" for preventing discrimination."[282] Indeed, in a unanimous decision, the Commission recently found that Qwest willfully and repeatedly violated section 252(i) of the Act by failing to file numerous interconnection agreements with the appropriate state commissions, and proposed a $9 million fine on Qwest for engaging in this conduct.[283] Therefore, to preserve competition in the marketplace, it is essential that all ILECs, file negotiated agreements with the appropriate

---

280 *Qwest Declaratory Ruling* ¶ 10.

281 *Id.*

282 *Local Competition Order* ¶ 1296.

283 *Qwest Corp, Apparent Liability for Forfeiture, Notice of Apparent Liability for Forfeiture*, FCC 04-57 (rel. Mar. 12, 2004).

state commission in accordance with their nondiscrimination obligations. Absent compliance with this fundamental requirement, there is no way to assess the terms and conditions upon which the ILEC has agreed to provide network elements to carriers, and no way to determine whether the ILEC is making available its commercial agreements equally to all carriers.

There is no merit to ILEC claims that filing these agreements would taint other negotiations or in any way stymie competition. Acting in accordance with the nondiscrimination obligations would further the Commission's goals of restoring certainty in the marketplace and promoting competition. The Commission already has stated that the obligation to engage in good faith negotiations precludes a party from preventing disclosure to federal or state regulators or in support of arbitration petitions.[284] Under the Act, ILECs are required to file executed agreements with the applicable state commissions. As such, ILEC claims that disclosing negotiating positions would taint other negotiations is simply immaterial to its filing obligation under section 252(e)(1) of the Act.

Commercially negotiated agreements are not federal agreements that require compliance with section 211 of the Act and section 43.51[285] of the Commission's rules. Section 211(a) of the Act applies only to contracts "affecting traffic regulated under the Communications Act."[286] The commercially negotiated agreements at issue pertain to traffic, services, and interconnection that are subject to the authority of the states, not the Commission. In addition, as the Commission already has concluded, the Act specifically provides that these agreements are

---

284 *Local Competition Order* ¶ 151.

285 47 C.F.R. § 43.51.

286 *Biennial Regulatory Review, Policy and Rules Concerning the International, Interexchange Marketplace, Notice of Proposed Rulemaking*, 15 FCC Rcd 20,008 ¶ 33 (2000).

subject to state review. In the *Qwest Declaratory Ruling*, the Commission emphasized that these agreements are subject to the "section 252 filing process [that] will occur with the states...."[287] Accordingly, there is no merit to the argument that these agreements are subject to section 211 of the Act.

2. *The Commission must reject BellSouth's petition for forbearance from its filing obligations.*

The Commission must reject BellSouth's petition for forbearance from its filing obligations.[288] BellSouth has not – and cannot – satisfy the statutory criteria for forbearance.[289] Forbearance is appropriate only of the following criteria are met:

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.[290]

BellSouth cannot demonstrate that the enforcement of such regulation is not necessary to ensure that charges and practices are reasonable and not discriminatory. Indeed, the Commission already has found that section 252(i) is a primary tool to prevent discrimination.[291]

---

287 *Qwest Declaratory Ruling* 10.

288 *See* Petition for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Section 252 with Respect to Non-251 Agreements, WC Docket No. 04-____(filed May 27, 2004).

289 47 U.S.C. § 160.

290 *Id.*

291 *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket No. 01-338, Second Report and Order, FCC 04-164, ¶ 18 (July 13, 2004).

It is essential that carriers have access to the agreements filed by other carriers, and absent the availability of these agreements, carriers will be able to negotiate secret deals to the detriment of carriers and ultimately their end user customers. There is no merit to BellSouth's argument that forbearance from section 252 filing requirements will in any way benefit consumers. To the contrary, particularly customers served by smaller carriers will be irreparably harmed as those carriers will be forced to spend valuable resources negotiating their own agreements with the BOCs.

In addition, requiring carriers to comply with the filing requirements is in the public interest. For the reasons stated above, it is essential that carriers have access to the commercially negotiated agreements that other carriers have entered into with the BOCs. In addition, smaller carriers frequently do not have the resources or the leverage to negotiate with the BOCs, and it is necessary to ensure that they have access to these agreements. Doing otherwise would be contrary to the public interest, as carriers would not be able to avail themselves of these agreements, thus affecting their access to BOC services and ultimately end user customers.

V. CONCLUSION

For the foregoing reasons, the Joint Commenters respectfully request that the Commission grant the relief requested herein.

Respectfully submitted,

Genevieve Morelli
Jennifer M. Kashatus
Erin W. Emmott
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
(202) 955-9600 (telephone)
(202) 955-9792 (facsimile)

Counsel to the PACE Coalition, Broadview Networks, Grande Communications and Talk America Inc.

October 4, 2004

CERTIFICATE OF SERVICE

I, Meredith L. Pica, hereby certify that on this 4th day of October 2004, a true and correct copy of the foregoing **Comments of The PACE Coalition, Broadview Networks, Grande Communications and Talk America**, was hand delivered upon the following:

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Janice M. Myles
Wireline Competition Bureau
Competitive Policy Division
445 12th Street, S.W., Suite 5-C327
Washington, DC 20554

Best Copy and Printing, Inc.
Portals II
445 12th Street, S.W.
Room CY-B402
Washington, DC20554

Jeff Carlisle
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Thomas Navin
Acting Division Chief, Competitive Policy, Division, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Jeremy Miller
Assistant Chief, Competitive Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Michelle Carey
Deputy Chief, Wireless Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

John A. Rogovin
General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Christopher Libertelli
Senior Legal Advisor to Chairman Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Matthew Brill
Sr. Legal Advisor to Commissioner Abernathy
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Jessica Rosenworcel
Legal Advisor to Commissioner Copps
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Daniel Gonzalez
Sr. Legal Advisor to Commissioner Martin
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Scott Bermann
Legal Advisor to Commissioner Adelstein
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Meredith L. Pica

Meredith L. Pica

ATTACHMENT A

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338

DECLARATION OF JOHN M. IVANUSKA
ON BEHALF OF BIRCH TELECOM

I, John M. Ivanuska, hereby declare that the following is true and correct:

1. I am employed by Birch Telecom ("Birch") as its Vice President – Regulatory & Carrier Relations. My business address is 2020 Baltimore Avenue, Kansas City, Missouri 64108. In this position I manage all facets of Birch's interactions between Birch and its major Regional Bell Operating Company ("RBOC") vendors, SBC Communications ("SBC"), and BellSouth Communications Corporation ("BellSouth"). I also help formulate and advocate regulatory policy and help prioritize those regulatory issues in which Birch will engage.

2. Birch operates as both a facilities-based Competitive Local Exchange Carrier ("CLEC") and an Unbundled Network Element – Platform ("UNE-P") CLEC primarily in the SBC states of Kansas, Missouri, Texas, and Oklahoma, and in major markets throughout the BellSouth region. Based in Kansas City, Missouri, Birch owns and operates class 5 circuit-switching equipment in 8 metro area markets in the SBC states of Kansas, Missouri, Oklahoma, and Texas, and owns and operates an

extensive data network infrastructure throughout this 4-state SBC territory. Birch offers a complete set of telecommunications services including local and long distance voice, Internet access, Web Hosting and Integrated voice and data services. Services are provided to more than 500,000 small business and residential lines by means of a combination of the company's own facilities, unbundled network elements ("UNEs") and services purchased from Incumbent Local Exchange Carriers ("ILECs"), and facilities and services purchased from other competitive telecommunications carriers.

3. The purpose of this Declaration is to explain the critical importance to Birch (and ultimately to a majority of the mass-market consumers) of retaining a Section 251(c)(3)-based wholesale UNE-P obligation to be able to offer competitive POTS services. I will explain the critical role that *only* UNE-P can play in serving this segment of the array of customers currently served by Birch, and will explain how even in those markets where Birch has a developed facilities presence, it is not possible to serve many of Birch's POTS-only dial tone customers.

4. Birch's base of more than 500,000 lines is primarily comprised of small and medium sized businesses. For some time now, Birch has been actively executing a strategy that attempts to reduce its embedded base of customers served via UNE-P by selling the customer services that Birch is able to provide via its own facilities in those markets where Birch has an established facilities footprint.

5. For the majority of Birch's embedded base of customers currently served via UNE-P, the prerequisite to Birch being able to migrate the customer to a facilities-based solution is the customer's willingness to also subscribe to a broadband-enabled Internet service from Birch, thereby creating an integrated voice/data solution.

Our experience demonstrated that: (1) Birch is unable to obtain from SBC the broadband loop facilities necessary to offer integrated voice/data solutions to a large portion of its UNE-P base and, (2) there are a large number of customers that are only interested in basic POTS service and are unwilling to subscribe to an integrated voice/data offering, regardless of the various incentives offered by Birch. As such, the only means to serve such customers is through UNE-P.

6. Before Birch can even *offer* the customer a broadband-based service using Birch's switching facilities, it must first determine whether broadband-compatible loop facilities are available to reach the customer. Birch uses two types of broadband connections, DS1 loops and DSL-capable loops. Of the more than 84,000 customer locations that Birch analyzed in the SBC region (where Birch network facilities are located), SBC could provision a DS-1 loop to only 49% of the locations, with only 6% more of the locations reachable with DSL-capable loop facilities (based on the Bulk Loop Qualification results from SBC). For a full 45% of its UNE-P customers, Birch could not even obtain the broadband-compatible facilities it would need to offer the customer an integrated voice/data option.

7. When up-selling to that portion of the UNE-P base to which Birch was able to offer facilities-based services, Birch discovered considerable customer resistance to integrated voice/data services, particularly among smaller customers. For larger customers (with 10 or more voice lines), more than 1/3rd of the facilities-eligible customers refused to be migrated to a facilities-based product and chose to remain with their stand-alone UNE-P voice offering. As Birch moved to smaller line-sized UNE-P customers, 85-90% of the customers were unwilling to be migrated to an integrated

facilities-based product, and chose to remain with their stand alone UNE-P voice offering.

8. Birch's disappointing experience selling integrated services to its UNE-P subscriber base occurred even though Birch employed numerous customer incentives including:

- Waiver of all nonrecurring charges;
- Offering of a month-to-month option (term agreement normally required);
- Offering of 50% or 100% off the first monthly bill;
- Offering an additional 5% monthly bill discount for a 1 year term;
- Offering an additional 10% monthly bill discount for a 2 year term;
- Offering an additional 15% monthly bill discount for a 3 year term;
- Offering special monthly recurring credits ranging from $25-$100 for the addition of broadband Internet depending on the product and bandwidth purchased.

9. Birch also offered nearly double the typical sales commissions for the successful sale of a facilities product vs. a UNE-P product, or for the successful migration from the UNE-P based product to a facilities-based product.

10. Despite all of the heightened sales focus and customer incentives to migrate off of UNE-P and onto one of Birch's facilities-based products, Birch's experience shows that there will *always* be a significant portion of Birch's embedded base of customers that are either:

- At a location that is not eligible for an integrated product offering because the ILEC is unable to provide broadband-compatible loop facilities;
- Unwilling to subscribe to an integrated offering that includes a mandatory broadband access component; or,
- Unwilling to migrate off of UNE-P for various other reasons.

In short, these customers either want to stay POTS-only, or must as a matter of technology constraints, remain POTS-only. Birch's experience in attempting to aggressively and proactively migrate its embedded base of POTS-only UNE-P customers to one of its facilities offerings has proven that absent a continued wholesale UNE-P product from the ILECs, this group of customers will lose their ability to choose a provider other than the ILEC.

This concludes my declaration.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 2nd day of October, 2004.

John Ivanuska

ATTACHMENT B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
	)	
Review of the Section 251 Unbundling Obligations Of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338

AFFIDAVIT OF MICHAEL HOU

I, Michael Hou, being duly sworn, do hereby state:

1. My name is Michael Hou. I am Senior Vice President at Broadview Networks. My business address is 744 Broad Street, 10th Floor, Newark, New Jersey 07102.

2. I have Bachelor of Science and Master of Science degrees in Electrical Engineering and Computer Science, both with Honors from M.I.T. I have over sixteen years of experience in the telecommunications business, and I have held a variety of positions in carrier sales, product management, finance, regulatory, systems development, operations, and network planning. I have been involved in a variety of federal and state public utility commission proceedings, including, most recently, the New York Public Service Commission regulatory proceedings regarding hot cut processes.

3. My current responsibilities include managing Broadview Networks's wholesale services business, which includes providing network, provisioning, and other system capabilities for other carriers, including managing the hot cut process for AT&T. I also have been involved in the definition and design of the operational processes and systems that manage Broadview's hot cut processes with Verizon.

4. In my affidavit, I address several of the operational impairments that hot cuts pose, including, notably, scalability. In addition, I will discuss the capabilities that the Commission must require incumbent local exchange carriers ("ILECs") to adopt and maintain to improve their hot cut processes and systems.

5. In the *Triennial Review Order*, the Commission concluded that competitive local exchange carriers ("CLECs") operating in the mass market would be impaired without access to unbundled local switching. The Commission based this finding on several factors, including its determination that hot cut processes create substantial operational and economic barriers to the ability of CLECs to offer services in the mass market. Indeed, the Commission found that not having a well-defined, well-supported hot cut process and systems "frequently lead to provisioning delays and service outages" and that hot cuts are "often priced at rates that prohibit facilities-based competition for the mass market." *Triennial Review Order* ¶ 465. The Commission also found other impediments due to hot cuts, including the costs of hot cuts, exacerbated by churn, which makes it uneconomic to serve mass market customers, and the limitations in provisioning large numbers of hot cuts due to the manual processes ILECs have employed. *Triennial Review Order* ¶ 470.

6. Each of the operational and economic barriers that the Commission found in the *Triennial Review Order* remain in place today. Carriers must use a hot cut process to move the customer from the ILEC's switch to the CLEC's switch. In other words, if a CLEC wants to serve a customer using UNE-L, it cannot do so without using the hot cut process to move that customer's loop onto its own switching network. Carriers must use a hot cut process for each and every customer – regardless of the state in which the

customer resides or the ILEC that serves the customer – to move that customer from the ILEC to the CLEC. Accordingly, although ILEC hot cut procedures vary from ILEC to ILEC, CLECs encounter the same types of operational and economic impairments regardless of the ILEC and the state.

7. In some instances in this affidavit, I will distinguish among the three types of hot cuts: individual, batch, and bulk (a/k/a project hot cuts). By individual hot cuts, I am referring to the process used for single loop migrations from the ILEC to a CLEC, from one CLEC to another CLEC, and from UNE-P or total services resale to UNE-L. The bulk hot cut process refers the conversion of multiple lines all within the same central office. The batch process recently has been defined as new hot cut processes that ILECs have proposed to satisfy the requirements in the *Triennial Review Order*.

8. Broadview Networks has been actively doing individual as well as bulk/project hot cuts in the Verizon territory for almost 5 years. Accordingly, in this affidavit, I will focus on Verizon's processes and procedures. It is my understanding that Verizon's hot cut processes are more automated than those of other ILECs. I will explain the enhancements that the Commission must require Verizon to take to its systems, and I will explain why the Commission must require other ILECs to adopt similar procedures to Verizon with the improvements that I recommend.

9. Regardless of the type of hot cut, the hot cut process remains a largely manual process, which contributes to the limits to how many lines can be cut in a given central office per day.

10. Scalability issues are a principal concern for CLECs. Currently, ILEC hot cut processes are not equipped to handle the large volumes of hot cuts that will be

necessary if the Commission removes local switching as a section 251(c)(3) UNE. With regard to Verizon, in particular, Verizon only will permit 150 lines to be hot cut ***industry-wide*** per central office per night. With this limit in place, there is simply no way Verizon could process the number of hot cuts that would be necessary if the Commission were to remove unbundled local switching as section 251(c)(3).

11. Verizon's answer to the scalability problem is to hire more people. There is no basis to conclude that Verizon could hire and train enough people to meet demand for hot cuts in one state, let alone throughout its region. It seems unlikely that the large number of people required to perform all of these hot cuts could be in the same central office at the same time and effectively process the cut overs. In addition, the people that Verizon (or other ILECs, if their answer also is to hire more people) would hire likely would be temporary employees who would be hired to perform a specific task for a limited period of time. These temporary employees would not have any incentive to perform the job efficiently or correctly, thereby creating a substantial risk of service disruption.

12. There also are other limitations with the current hot cut process. For instance, if the customer line is on non-copper facilities such as integrated digital loop carrier ("IDLC"), its lines do not appear on the main distribution frame ("MDF"). Before an ILEC such as Verizon can cut these lines over to a CLEC's collocated equipment in the central office, the line needs to be moved to copper facilities, assuming such facilities are available. Because alternative copper facilities are not available everywhere, in some markets the number of eligible lines for hot cuts actually can be reduced by 20-30%, giving the customer no alternative except to stay on the ILEC's network.

13. In addition to the impairments above that preclude hot cuts from being performed, there also are problems with ILECs' systems. It is my understanding that Verizon is the only ILEC that maintains a partially automated hot cut process. As such, Verizon is far ahead of other ILECs in terms of hot cut processes and procedures. Although Verizon has attempted to define, support, and improve the current individual and bulk hot cut processes, further refinements to its systems and improvements are necessary. Indeed, even though Verizon has automated much of its hot cut process, the pre-wiring and actual cutover still are performed manually.

14. Notwithstanding those limitations, Verizon has improved its internal OSSs to permit a substantial number of UNE-L hot cut orders to flow-through automatically to its myriad internal systems, processes, and operational groups with little manual intervention. More importantly, Verizon also has made available to CLECs tools that track the status of a hot cut order from order submission to completion. As discussed below, depending upon the type of hot cut (*i.e.*, individual, bulk, or batch), Verizon's provisioning tool provides different levels of information regarding the status and the completion of the order. *See infra* ¶ 19.

15. The Joint Commenters explain that it is essential that ILECs have efficient hot cut procedures in place, and propose standards that the Commission should adopt. Verizon's procedures, internal system flow-through capabilities, support, and CLEC tools and interfaces are reasonable starting points for other ILECs. Below, I discuss some of those procedures and explain the basis for the recommendation.

16. The Joint Commenters state that the Commission should require all ILECs to adopt an electronic provisioning tool similar to the provisioning tool that Verizon has

developed, referred to as Wholesale Provisioning Tracking System ("WPTS") that enables a CLEC to monitor, track, and verify all hot cut processes, *i.e.*, individual, both, and bulk from the initial submission request until the completion of the cutover.

17. The Joint Commenters advocate that the WPTS should include two different methods for CLECs to use to interact with WTPS: Web GUI and an XML system application-to-application interface using the HTTPS delivery protocol. Both of these interfaces are well-known throughout the industry. Carriers with smaller volumes of hot cuts generally will gravitate toward the Web GUI interface because it requires no development efforts to use and their smaller volumes may not warrant the investments needed to automate the interactions between WPTS and their systems. Carriers that anticipate generating large volumes of orders across a large network require automated interactions between their systems and the ILEC's WPTS system and generally will gravitate to WPTS using XML with HTTP as the delivery protocol, and using the Web GUI as a backup and/or to validate the XML transactions. Automated interactions such as receiving a WPTS XML interface notification that a hot cut has been completed will allow a CLEC to have its systems automatically trigger the notification to the NPAC (Number Portability Administration Center) to complete the LNP (Local Number Portability) request so that the customer's line can start receiving calls to the CLEC switch.

18. It is appropriate for the Commission to require carriers to use XML using the HTTPS delivery protocol. CLECs in Verizon's territory already have devoted substantial resources in developing and utilizing bothVerizon's WPTS' Web GUI and XML interfaces. It is my understanding that Verizon is the only ILEC with an electronic

provisioning tool such as WPTS. Accordingly, it makes sense to require other ILECs to model their electronic hot cut provisioning system on one that already is in place and being used by CLECs.

19. Even though Verizon has a WPTS in place, it does not support all of the functions for all types of hot cuts. The Commission should require Verizon to make improvement to its WPTS. These improvements also are appropriate and necessary for other ILECs' systems. Using Verizon's WPTS as an example, currently, its system does not support automated dial tone check notification for bulk hot cuts. In contrast, for single hot cuts, the CLEC will receive a message via XML or the Web GUI that Verizon has completed the dial tone check or if no dial tone is found. Similarly, when Verizon has completed a single hot cut, Verizon will notify the CLEC with a message via XML or the Web GUI. These same notifications are not available for the bulk hot cut process. These two capabilities need to be integrated into Verizon's WPTS for the bulk hot cut processes to provide a greater degree of automation with the overall hot cut process (which Verizon also refers to as project hot cuts or large hob hot cuts). It is highly likely that carriers with the greatest volume of hot cuts will be using bulk hot cut processes to migrate their lines onto their or other carrier's networks. Receiving notifications of dial tone checks and lines that have been cutover only manually via spreadsheets or phone calls limits hot cut efficiencies and throughput volumes and increases hot cut error rates (which in turn increases the probability for customer outages).

20. The Joint Commenters identify the components that must be included in a WPTS system. I will not reiterate those points herein, but I note, however, that each of

those points is critical to working toward an efficient migration from the ILEC to the CLEC.

This concludes my affidavit.

Executed this 3rd day of October, 2004.

Michael Hou

STATE OF New York

COUNTY OF New York

I, Naomi L. Singer, a Notary Public in and for the above-stated jurisdiction, whose commission expires on the 24 day of MAY 2008, do hereby certify that whose name is signed to the writing above, has acknowledged the same before me in my above-stated jurisdiction.

NAOMI L. SINGER
NOTARY PUBLIC-STATE OF NEW YORK
No. 02SI6109843
Qualified in New York County
Commission Expires May 24, 2008